

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

VARSITY BRANDS, INC., et al.,

Plaintiffs/Counter-Defendants,

v.

Case No. 10-02508

STAR ATHLETICA, LLC,

Defendant/Counter-Claimant.

ORDER DENYING DEFENDANT'S MOTION FOR ATTORNEYS' FEES

Following the court's grant of summary judgment in its favor, Defendant Star Athletica, LLC moves for attorneys' fees. Defendant argues that Plaintiffs' suit was "entirely about commercial competition, specifically protecting Varsity's market position, not protecting two-dimensional works of art or any other recognized goal of the Copyright Act." Defendant further argues that Plaintiffs brought their suit with the goal of preventing "start-up competitors" from entering the market. Defendant asks for attorneys' fees under both the Copyright Act, 17 U.S.C. § 505, and the Lanham Act, 15 U.S.C. § 1117(a). The court does not believe that a response from Plaintiffs is necessary to resolve this motion.

Although the court has authority to grant attorneys' fees to Defendant, it does not choose to do so here. The court found this case to be an intriguing issue of first impression in this circuit. As addressed more fully in its Opinion and Order, [Dkt # 199] there is considerable disagreement between courts that have addressed similar issues on the appropriate copyright standard to apply in addressing pictorial, graphic, and sculptural ("PGS") works. Commentators have encountered comparable difficulty. See,

e.g., Paul Goldstein, 1 *Goldstein on Copyright* § 2.5.3, at 2:67 (3d ed. 2013) (“Of the many fine lines that run through the Copyright Act, none is more troublesome than the line between protectible [PGS] works and unprotectible utilitarian elements of useful articles.”). The instant matter was extensively briefed by the parties, and although the court ultimately ruled in Defendant’s favor, it did not consider Plaintiffs’ arguments to be ill-conceived or without legal basis. Further, the court notes that Plaintiffs have appealed the court’s Opinion and Order, [Dkt. # 201] and it remains to be seen what light the Sixth Circuit will shine on the matter. Accordingly,

IT IS ORDERED that Defendant’s “Motion for Attorney Fees” [Dkt. # 204] is DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: March 18, 2014

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, March 18, 2014, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522